

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-32 are pending; Claims 1, 9, 17, and 25 having been presently amended.

Claims 1-32 stand rejected under 35 U.S.C. § 103 as being unpatentable over Off et al (U.S. Pat. No. 5,612,868) in view of Fajkowski (U.S. Pat. No. 5,905,246) and further in view of article "Customer responses to rainchecks" hereinafter referred to as Customer.

Firstly, Applicant acknowledges with appreciation the courtesy of Examiner Lastra and primary Examiner Myher to conduct an interview on October 23, 2003 during which time the outstanding issues in the present case were discussed. During the interview, it was pointed out by Applicant's representative that Customer primarily discloses alternatives to traditional rainchecking practices. Customer does not disclose the supplementing of rainchecks with additional incentives offered in conjunction with the raincheck.

As a whole, Customer shows the successes and failures of rainchecks, and offers alternative suggestions when a merchandise item is not in stock. Indeed, Customer discloses in the paragraph numbered 40 by the Office Action that the major interest in Customer is "what to do once a raincheck is issued." Customer discloses, for example, in the paragraph numbered 41 by the Office Action that:

As we noted earlier, in situations where retailers are not likely to meet customers' needs through the use of a raincheck, they might consider some *other option*, such as substitution *or some other form* of compensation. Some of these situations might be identified by simply asking customers what they want when the out-of-stock situation occurs -- i.e., "Would you like a raincheck, a substitution, or can we "compensate" you *some other way* to say we are sorry for being out of stock and keep you happy as a valued customer?"

Application No. 09/317,110  
Reply to Office Action of August 19, 2003

(Kelly 1979) Once a raincheck has been issued, and it becomes clear that the retailer will not be able to honor it in a timely manner, retailers might still salvage some goodwill by contacting raincheck holders and offering them an *alternative course of action*. [emphasis added]

Thus, as discussed during the interview, Customer discloses alternative actions to rainchecking, not supplemental actions (i.e. not the additional incentive). Furthermore, even the part of Customer noted above which discloses that an additional action is to be taken, this additional action (i.e., the salvaging of good will) occurs only once it becomes clear that the retailer will not be able to honor the raincheck in a timely manner. Thus, Customer does not disclose or suggest printing a raincheck which would include both at least one purchasing incentive and an additional incentive supplementing the at least one purchasing incentive associated with the raincheck. Rather, in this section relied on in the outstanding Office Action, Customer discloses issuing a raincheck, voiding the raincheck, and offering an alternative course of action.

Accordingly, during the interview, changes were discussed during the interview which would clarify the independent claims. However, no agreement on patentability was reached.

Further to the clarifications proposed during the interview, Applicant submits herewith formally clarifying changes to define that the defined raincheck information includes an additional incentive different from and supplementing the at least one purchasing incentive associated with the item subject to rainchecking, the additional incentive being offered in conjunction with the raincheck to compensate a customer for the item being out of stock.

Further, besides the above-noted disclosure in Customer which discloses the subsequent taking of an alternative course of action, Applicant respectfully submits that other

parts of Customer teach away from the present invention. For instance, Customer discloses in the paragraph numbered 43 by the Office Action that their research suggests *alternative out of stock* remedies. The alternative out of stock remedies listed in Customer include (1) substituting another size or another brand, (2) ordering the item from another store,<sup>1</sup> and (3) providing a gift certificate. Items (1) and (2) ameliorate the need for a customer to be given a raincheck for the out-of-stock item, as the customer's needs are met by the substitute product or product from another store. Thus, for alternative out of stock remedies (1) and (2), a raincheck is not needed. Item (3) the providing of a gift certificate is taught in Customer to be only used when there is a difficult-to-get item, and thus item (3) is also understood, like items (1) and (2) to be used *without* a raincheck being issued, as an alternative to rainchecking. Thus, Customer which teaches alternative *out of stock* remedies to rainchecks teaches away from the present invention. Thus, Customer can not be properly combined with Fajkowski and Off et al.

Finally, even if Customer were combined with Fajkowski and Off et al., then there would exist no teaching or suggestion in the combination to provide the defined additional incentive in conjunction with the raincheck. Rather, as noted above, such a combination would only suggest alternatives to be used *instead of* rather than in conjunction with the raincheck.

Thus, it is respectfully submitted that independent Claims 1, 9, 17, and 25 and the claims dependent therefrom patentably define over the applied prior art.

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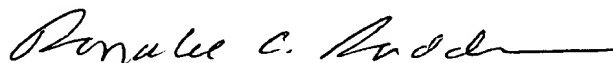
<sup>1</sup>Customer notes that ordering the item from another store is appropriate when the customer's need is immediate and the item does not lend itself to substitution.

Application No. 09/317,110  
Reply to Office Action of August 19, 2003

Consequently, in view of the present amendment and in light of the above discussions, the Applicant submits that the claims are allowable. Therefore, an early and favorable action is respectfully requested.

Respectfully submitted,

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